

## IN THE SUPREME COURT OF CALIFORNIA

THE PEOPLE,	)	
	)	
Plaintiff and Respondent,	)	
	)	S045982
v.	)	
	)	
JOHNNY AVILA, JR.,	)	
	)	Fresno County
Defendant and Appellant.	)	Super. Ct. No. 452067-2
_____	)	

### MODIFICATION OF OPINION

#### THE COURT:

The opinion, which appears at 38 Cal.4th 491, is modified in the following respects:

1. The paragraph on pages 563-564, which currently reads as follows, is deleted:

Even if there were insufficient corroboration, reversal would not be required “unless it is reasonably probable a result more favorable to the defendant would have been reached. [Citation.] The purpose of an instruction pursuant to section 1111 is to compel the jury to view accomplice testimony with distrust and suspicion. [Citation.]” (*People v. Miranda* (1987) 44 Cal.3d 57, 101.) Here, the jury had before it ample information suggesting that Richard’s testimony might not have been trustworthy. The jury knew that Richard was on trial and thus had every motive to deny his own participation in the murder and implicate a codefendant. Indeed, the gist of Richard’s testimony—that he did not furnish any of the weapons present on the North Hayes property and had little or no control over the activities occurring there—was inconsistent

with evidence that the purpose of the gathering that night was to assist him, at his request, in protecting the property from a drive-by shooting. Indeed, by all accounts, the victims eventually were taken away from the property at Richard's insistence. Moreover, defendant attacked Richard's credibility at length during closing argument. Under these circumstances, it is not reasonably probable that a result more favorable to defendant would have been reached had the jury been instructed on accomplice liability as to Richard Avila, or had argument referring to him as an accomplice not been limited. For the same reasons, any error was also harmless beyond a reasonable doubt.

2. The paragraph on page 569, which currently reads as follows, is deleted:

Even if there were insufficient corroboration, reversal would not be required because the jury had before it ample information suggesting that Rodriguez's and Rojas's testimony might not have been trustworthy. For example, both were given immunity from prosecution in exchange for their testimony in this case. Rodriguez testified that he did not remember some portions of the night in question because he suffered a blackout from excessive alcohol consumption. And, the prosecution also presented evidence that Rojas was involved in the rapes of Spring and Medina, and had committed other crimes in the past. Under these circumstances, the error, if any, in failing to instruct the jury on a natural and probable consequences doctrine of accomplice liability was harmless by any applicable standard.

These modifications do not effect a change in the judgment.